

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED SPECIALTY INSURANCE  
COMPANY, a foreign insurer

Plaintiff,

vs.

CHIEFTAIN, LLC, a Washington Limited  
Liability Company; PREMIER HOME  
REPAIRS, INC., a Washington company;

Defendants.

No. 2:22-cv-779

**COMPLAINT FOR DECLARATORY  
JUDGMENT**

Plaintiff United Specialty Insurance Company (“USIC”) alleges as follows:

**I. NATURE OF ACTION**

1. This is an action under the Federal Declaratory Judgment Act, 28 U.S.C §2201 *et seq.* USIC seeks a declaration of the parties’ rights and obligations of Chieftain, LLC and USIC under a commercial general liability insurance policy issued to Premier Home Repairs, Inc. (“Premier”) regarding the Underlying Lawsuit King County Superior Case No. 21-2-05120-7 SEA (“Underlying Action”).

2. USIC seeks a judicial declaration that it owes no duty to defend or indemnify Chieftain LLC or Premier Home Group Repairs, LLC in the Underlying Action.

1 **II. PARTIES**

2 3. Plaintiff United Specialty Insurance Company (“USIC”) is and was a Texas  
3 Corporation with its principal offices located in Bedford, Texas. USIC is and was engaged in the  
4 business of property and casualty insurance. USIC issued a policy of insurance with effective  
5 dates of May 7, 2019 to May 7, 2020, Policy No. DCI00865-00 (“Policy”), providing commercial  
6 general insurance coverage to policyholder Premier.

7 4. Defendant Chieftain, LLC is a Washington limited liability company with its  
8 principal place of business in Seattle, Washington. Upon information and belief all members of  
9 Chieftain are residents of Washington state.

10 5. Defendant Premier Home Repairs, Inc. is a Washington corporation with its  
11 principal place of business in Seattle, Washington.

12 **III. JURISDICTION AND VENUE**

13 6. This Court has original jurisdiction of this matter under 28 U.S.C. §1332, in that  
14 this is a civil action between citizens of different states in which the amount in controversy  
15 exceeds, exclusive of costs and interest, \$75,000.

16 7. This is a claim for declaratory relief as authorized by 28 U.S.C. §2201; the  
17 Washington Uniform Declaratory Judgment Act of RCW 7.24.010, *et seq.*; and by Rule 57 of the  
18 Federal Rules of Civil Procedure.

19 8. Venue is proper in the Western District of Washington because the Underlying  
20 Action is filed in King County and the subject property is located in King County.

21 **IV. FACTS**

22 9. Based upon information and belief, Defendant Chieftain was the general contractor  
23 hired to construct certain residential properties.



COVERAGE PART

SCHEDULE

<b>Name of Person or Organization:</b>
Blanket as required by virtue of written contract.
<b>Location and Description of Completed Operations:</b>
<b>Additional Premium:</b>

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.

**Section II – Who is An Insured** is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of “your work” at the location designated and described in the schedule of this endorsement performed for that insured and included in the “products-completed operations hazard”.

\* \* \*

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**PRIMARY AND NONCONTRIBUTORY – OTHER INSURANCE CONDITION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY  
COVERAGE PART

The following is added to the **Other Insurance** Condition and supersedes any provision to the contrary:

**Primary And Noncontributory Insurance**

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy

provided that:

- (1) The additional insured is a Named Insured under such other insurance; and
- (2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

\* \* \*

## COMMERCIAL GENERAL LIABILITY COVERAGE FORM – CG 00 01 04 13 SECTION I – COVERAGE A

### 1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of “bodily injury” or “property damage” to which this insurance applies. We will have the right and duty to defend the insured against any “suit” seeking those damages. However, we will have no duty to defend any insured against any “suit” seeking damages for “bodily injury” or “property damage” to which this insurance does not apply. We may, at our discretion, investigate any “occurrence” and settle any claim or “suit” that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III - Limits of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided under Supplementary Payments – Coverages A and B.

- b. This insurance applies to “bodily injury” and “property damage” only if:

- (1) The “bodily injury” or “property damage” is caused by an “occurrence” that takes place in the “coverage territory”;
- (2) The “bodily injury” or “property damage” occurs during the policy period; and
- (3) Prior to the “policy period,” no insured listed under Paragraph 1. Of Section II – Who Is an Insured and no “employee” authorized by you to give or receive notice of an “occurrence” or claim, knew that the “occurrence,” “bodily injury” or “property damage” had occurred, in whole or in part. If such a listed insured or authorized “employee” knew, prior to the policy period, that the “bodily injury” or “property damage” occurred, then any continuation, change or resumption of such “bodily injury” or “property damage” during or after the policy period will be deemed to have been known prior to the policy period.

c. “Bodily injury” or “property damage” which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II – Who Is An Insured or any “employee” authorized by you to give or receive notice of an “occurrence” or claim, includes any continuation, change or resumption of that “bodily injury” or “property damage” after the end of the policy period.

d. “Bodily injury” or “property damage” will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II – Who Is An Insured or any “employee” authorized by you to give or receive notice of an “occurrence” or claim:

- (1) Reports all, or any part, of the “bodily injury” or “property damage” to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the “bodily injury” or

“property damage”; or

(3) Becomes aware by any other means that “bodily injury” or “property damage” has occurred or has begun to occur.

e. Damages because of “bodily injury” include damages claimed by any person or organization for care, loss of services or death resulting at any time from the “bodily injury”.

\* \* \*

## 2. Exclusions

This insurance does not apply to:

\* \* \*

### b. Contractual Liability

“Bodily injury” or “property damage” for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

(1) That the insured would have in the absence of the contract or agreement; or

(2) Assumed in a contract or agreement that is an “insured contract”, provided the “bodily injury” or “property damage” occurs subsequent to the execution of the contract or agreement. Sole for the purposes of liability assumed in an “insured contract”, reasonable attorneys’ fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of “bodily injury” or “property damage”, provided:

(a) Liability to such party for, or for the cost of, that party’s defense has also been assumed in the same “insured

contract”; and

- (b) Such attorneys’ fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

\* \* \*

**j. Damage To Property**

“Property damage” to:

\* \* \*

- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the “property damage” arises out of those operations; or

- (6) That particular part of any property that must be restored, repaired or replaced because “your work” was incorrectly performed on it.

\* \* \*

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to “property damage” “included in the “products-completed operations hazard”.

\* \* \*

**l. Damage To Your Work**

“Property damage” to “your work” arising out of it or any part of it and included in the “products-completed operations hazard”.



This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

**m. Damage To Impaired Property Or Property Not Physically Injured**

“Property damage” to “impaired property” or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in “your product” or “your work”; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to “your product” or “your work” after it has been put to its intended use.

\* \* \*

**SECTION V – DEFINITIONS**

\* \* \*

- 2.** “Bodily injury” means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

\* \* \*

- 8.** “Impaired property” means tangible property, other than “your product” or “your work”, that cannot be used or is less useful because:

- a.** It incorporates “your product” or “your work” that is known or thought to be defective, deficient, inadequate or dangerous; or
- b.** You have failed to fulfill the terms of a contract or

agreement;

if such property can be restored to use by the repair, replacement, adjustment or removal of “your product” or “your work” or your fulfilling the terms of the contract or agreement.

\* \* \*

**13.** “Occurrence” means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

\* \* \*

**16.** “Products-completed operations hazard”:

**a.** Includes all “bodily injury” and “property damage” occurring away from premises you own or rent and arising out of “your product” or “your work” except:

**(1)** Products that are still in your physical possession; or Work that has not yet been completed or abandoned. However, “your work” will be deemed completed at the earliest of the following times:

**(a)** When all of the work called for in your contract has been completed.

**(b)** When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.

**(c)** When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as

completed.

**b.** Does not include “bodily injury” or “property damage” arising out of:

- (1)** The transportation of property, unless you injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the “loading or unloading” of that vehicle by any insured;
- (2)** The existence of tools, uninstalled equipment or abandoned or unused materials; or
- (3)** Products or operations for which the classification, listed in the Declarations or in a policy Schedule, states that products-completed operations are subject to the General Aggregate Limit.

**17.** “Property damage” means:

- a.** Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b.** Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the “occurrence” that caused it.

For the purposes of this insurance, electronic data is not tangible property.

\* \* \*

**21.** “Your product”

**a.** Means:

- (1)** Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
  - (a)** You;

(b) Others trading under your name; or

(c) A person or organization whose business or assets you have acquired; and

(2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

b. Includes:

(1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of “your product”; and

(2) The providing of or failure to provide warnings or instructions.

c. Does not include vending machines or other property rented to or located for the use of others but not sold.

22. “Your work”:

a. Means:

(1) Work or operations performed by you or on your behalf; and

(2) Materials, parts or equipment furnished in connection with such work or operations.

b. Includes:

(1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of “your work”; and

(2) The providing of or failure to provide warnings or instructions.

\* \* \*

1 The Policy further contains CG21671204 – FUNGI OR BACTERIA  
2 EXCLUSION, which states:

3 THIS ENDORSEMENT CHANGES THE POLICY. PLEASE  
4 READ IT CAREFULLY

5 **FUNGI OR BACTERIA EXCLUSION**

6 This endorsement modifies insurance provided under the following:

7 **COMMERCIAL GENERAL LIABILITY COVERAGE PART**

8 **A. The following exclusion is added to Paragraph 2. Exclusions**  
9 **of Section I – Coverage A – Bodily Injury and Property**  
10 **Damage Liability:**

11 **2. Exclusions**

12 This insurance does not apply to:

13 **Fungi or Bacteria**

14 **a.** “Bodily Injury or “property damage” which  
15 would not have occurred, in whole or in part,  
16 but for the actual, alleged or threatened  
17 inhalation of, ingestion of, contact with,  
18 exposure to, existence of, or presence of, any  
19 “fungi” or bacteria on or within a building or  
20 structure, including its contents, regardless of  
21 whether any other cause, event, material or  
22 product contributed concurrently or in any  
23 sequence to such injury or damage.

**b.** Any loss, cost or expenses arising out of the  
abating, testing for, monitoring, cleaning up,  
removing, containing, treating, detoxifying,  
neutralizing, remediating or disposing of, or in  
any way responding to, or assessing the  
effects of, “fungi” or bacteria, by any insured  
or by any other person or entity.

This exclusion does not apply to any “fungi” or  
bacteria that are, are on, or are contained in, a good  
or product intended for bodily consumption.

1           **B.**     The following exclusion is added to Paragraph 2. **Exclusions**  
2           of **Section I – Coverage B – Personal and Advertising**  
3           **Liability:**

4                     **2.     Exclusions**

5                     This insurance does not apply to:

6                     **Fungi or Bacteria**

7                     **a.**     “Personal and advertising injury” which would  
8                     not have taken place, in whole or in part, but for  
9                     the actual, alleged or threatened inhalation of,  
10                    ingestion of, contact with, exposure to,  
11                    existence of, or presence of any “fungi” or  
12                    bacteria on or within a building or structure,  
13                    including its contents, regardless of whether  
14                    any other cause, event, material or product  
15                    contributed concurrently or in any sequence  
16                    to such injury.

17                    **b.**     Any loss, cost or expenses arising out of the  
18                    abating, testing for, monitoring, cleaning up,  
19                    removing, containing, treating, detoxifying,  
20                    neutralizing, remediating or disposing of, or  
21                    in any way responding to, or assessing the  
22                    effects of, “fungi” or bacteria, by any insured  
23                    or by any other person or entity.

**C.**     The following definition is added to the **Definitions** Section:

                  “Fungi” means any type or form of fungus, including mold  
                  or mildew and any mycotoxins, spores,scents or byproducts  
                  produced or released by fungi.

                  \* \* \*

                  The Policy also contains DCCGL0191115 – EXCLUSION –  
                  CONTINUOUS OR PROGRESSIVE INJURY AND DAMAGE,  
                  which states:

                  THIS ENDORSEMENT CHANGES THE POLICY. PLEASE  
                  READ IT CAREFULLY.

**EXCLUSION – CONTINUOUS OR PROGRESSIVE INJURY**

**AND DAMAGE**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

**A.** This insurance does not apply to any damages because of or related to “bodily injury” or “property damage”:

1. Which first existed, or alleged to have first existed, prior to the inception date of this policy; or
2. Which are, or are alleged to be, in the process of taking place prior to the inception date of this policy, even if the actual or alleged “bodily injury” or “property damage” continues during this policy period; or
3. Which were caused, or are alleged to have been caused, by the same condition or construction defect which resulted in “bodily injury” or “property damage” which first existed prior to the inception date of this policy.

We shall have no duty to defend any insured against any loss, claim, “suit” or other proceeding alleging damages arising out of or related to “bodily injury” or “property damage” to which this endorsement applies.

All other terms and conditions of this policy remain unchanged.

18. The Policy provides coverage according to its terms and conditions and not otherwise.

**VI. CAUSE OF ACTION: DECLARATORY JUDGMENT**

19. USIC realleges the allegations in paragraphs 1 through 18 as if fully set forth herein.

20. An actual and justiciable controversy exists between USIC and Defendants concerning whether Chieftain is an additional insured under the Policy issued to Premier.

21. An actual and justiciable controversy exists between USIC and Defendants whether

1 USIC is required to defend and/or indemnify Chieftain or Premier with respect to the Underlying  
2 Action.

3 22. Upon information and belief, the work performed by Premier at the subject property  
4 was completed prior to the subcontract being entered into. The subcontract therefore could not  
5 have applied to work at the subject property and does not require Chieftain to be named as an  
6 additional insured at that location.

7 23. USIC seeks a judicial declaration of the parties' respective rights and obligations  
8 under the insurance policy based upon the lack of alleged "property damage" occurring during the  
9 policy period.

10 24. USIC seeks a judicial declaration based upon the express language contained in the  
11 Policy's J, K and L exclusions: (j) Damage to Property, (k) Damage to Your Work, and (l) Damage  
12 to Your Product. The claims alleged in the Underlying Action are not covered based upon  
13 application of these exclusions.

14 25. USIC seeks a judicial declaration based upon the express language contained in the  
15 Policy's Continuous or Progressive Injury and Damage Exclusion. The Claims alleged in the  
16 Underlying Action are not covered based on the application of this exclusion.

17 26. USIC seeks a judicial declaration that given the Chieftain as settled the Underlying  
18 Action, USIC has no continuing duty to defend Chieftain or pay for pursuit of affirmative claims.

19 **VII. PRAYER FOR RELIEF**

20 USIC requests judgment against defendants as follows:

21 1. For Judgment for USIC against Defendants and each of them that USIC has no duty  
22 to defend or indemnify Chieftain in the Underlying Action.

23 2. For Judgment for USIC against Defendants and each of them that USIC has no duty



1 to defend or indemnify Premier in the Underlying Action.

2 3. For Judgment for USIC finding that it has no continuing duty to defend Chieftain  
3 and may withdraw from defense.

4 4. For Judgment for USIC finding that it has no continuing duty to defend Premier  
5 and may withdraw from defense.

6 5. For award of costs and fees allowed by law.

7 6. Such other relief as the Court deems just and proper.

8 DATED this 6<sup>th</sup> day of June, 2022.

9  
10 s/Ryan J. Hesselgesser

Ryan J. Hesselgesser, WSBA #40720

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